IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1774 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMIT @ CHAKO SATISHBHAI GODAVALE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1774 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MS BINODA GAJJAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/08/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Vadodara City, Vadodara, vide order dated January 25, 2001 detained the petitioner - detenu.

2. Averments made in the petition and the grounds of detention manifest that in view of the involvement of the petitioner in two cases registered against him with Karelibaug Police Station vide CR No. 172 of 1999 and 327 of 2000 for commission of the offences under Sections 143, 147, 148, 149, 323, 504, 307, 324 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act, the detaining authority felt it expedient to detain the petitioner with a view to curb his illegal activities as the same were prejudicial to the maintenance of public order.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or direction quashing and setting aside the impugned order of detention and also prayed to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Mr. Prajapati, learned advocate for the petitioner, restricted his arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and, therefore, order of detention is vitiated. Besides this, he has also contended that in the grounds of detention, the detaining authority has considered the two cases registered against the petitioner, one is of the year 1999 and another is of the year 2000. So far as the case registered in the year 1999 is concerned, it is an old case and, therefore, it cannot be said that the petitioner had involved in such activities which were prejudicial to the maintenance of public order. So far as the second case is concerned, that is of the year 2000. The said offence was registered on November 27, 2000 and the order of detention came to be passed on January 25, 2001, that is, after about two months. Therefore, on account of the delay which is not explained by the detaining authority, the order of detention is vitiated and he urged that the petition may be allowed by quashing and setting aside the impugned order of detention and setting the petitioner at liberty forthwith.

5. Ms. Gajjar, learned AGP has appeared for the respondents and opposed the petition by filing affidavit in reply which is sworn by the Commissioner of Police, Vadodara City, Vadodara. She contended that the last

offence against the petitioner came to be registered on November 27, 2000 and after his release in the said offence he continued his antisocial activities and the same were clearly disclosed in the statements of the witnesses which were recorded on January 16, 2001 and January 17, 2001. Therefore, in view of the continued involvement of the petitioner in the alleged illegal activities he should not be set at liberty. Moreover, the order of detention was passed by the detaining authority after considering all the aspects of the matter and more particularly in view of the continued involvement of the petitioner in illegal activities. She, therefore, urged that the petition may be rejected.

6. I have considered the submissions advanced by the learned advocates for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

7. There is no manner of doubt that the second and last offence against the petitioner came to be registered on November 27, 2000 whereas the impugned order of detention came to be passed on January 25, 2001. But prior to that, the detaining authority had recorded statements of two independent witnesses on January 16, 2001 and January 17, 2001 upon which reliance is placed while passing the order of detention against the petitioner. But no offence is registered against the petitioner on the basis of the said statements and, therefore, it is clear that the said statements were recorded only with a view to fill up the gap between the date of registering last offence and the date of passing the order of detention. Therefore, there was a delay of about two months in passing the impugned order of detention.

8. In the case of Anand Prakash v. State of UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. Similar view is also expressed by this Court in Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City, 1997 (1) GLH 381. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgments to the facts of the present case, the last offence registered against the petitioner on November 27, 2000 for commission of offence under Sections 324, 504 and 114 of the Indian Penal Code

could not be a proximate cause and, therefore, unexplained delay makes the ground of detention not proximate and vitiates the order of detention itself. So far as the contention made in para 13 of the affidavit in reply with regard to recording of the statements of independent witnesses on 16.1.2001 and 17.1.2001 is concerned, it has no substance in view of the fact that with a view to cover up the gap between the date of filing of the last offence against the petitioner and the date of order of detention, the detaining authority has recorded the statements of these two witnesses without registering offences against the petitioner on the basis of the said statements. Therefore, on the ground of delay alone, the order of detention deserves to be quashed and the petition deserves to be allowed.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 25, 2001 passed against the petitioner -detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

30.8.2001. (A.M. Kapadia, J.)

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